

ARTICLE 11. MISCELLANEOUS RULES

Rule 1101. Applicability of the Rules.

(a) **Courts and magistrates.** These rules apply to all courts of the State and to magistrates, and court commissioners and justices of the peace, masters and referees in actions, cases, and proceedings and to the extent hereinafter set forth. The terms “judge” and “court” in these rules include magistrates, court commissioners and justices of the peace.

(b) **Proceedings generally.** These rules apply generally to civil actions and proceedings, to contempt proceedings except those in which the court may act summarily, and to criminal cases and proceedings except as otherwise provided in the Arizona Rules of Criminal Procedure.

(c) **Rule of privilege.** The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(d) **Exceptions.** These rules—except those on privilege—do not apply to grand jury proceedings.

Comment to 2012 Amendment

The title and language of Rule 1101(d) have been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

No changes have been made to Rule 1101(a), (b), and (c).

Comment to Original 1977 Rule

Federal Rule 1101 has been supplanted by one that conforms to Arizona state practice. *See also* Rule 19.3, Arizona Rules of Criminal Procedure.

Cases

Paragraph (a) — Courts and magistrates.

1101.a.010 Information sufficient to establish probable cause to believe the existence of criminal behavior need not pass the test of admissibility under the Rules of Evidence.

State v. Superior Ct. (Blake), 149 Ariz. 269, 718 P.2d 171 (1986) (all that is needed is reasonably trustworthy information sufficient to lead a reasonable person to believe an offense has been committed and that a particular person committed it).

Paragraph (b) — Proceedings generally.

1101.b.010 Information sufficient to establish probable cause to arrest need not pass the test of admissibility under the Rules of Evidence.

State v. Superior Ct. (Blake), 149 Ariz. 269, 718 P.2d 171 (1986) (evidence does not have to be admissible to establish probable cause).

1101.b.020 The Rules of Evidence do not apply in those criminal proceedings when the Arizona Rules of Criminal Procedure provide they do not apply.

Mendez v. Robertson (State), 202 Ariz. 128, 42 P.3d 14, ¶ 10 (Ct. App. 2002) (Rule 7.4(c) of Arizona Rules of Criminal Procedure provides trial court may make release determinations based on evidence not admissible under rules of evidence, thus trial court properly considered

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prosecutor's avowals of what victim would say, and defendant did not have right to cross-examine victim).

Davis v. Winkler, 164 Ariz. 342, 793 P.2d 99 (Ct. App. 1990) (Rule 7.4(d), ARIZ. R. CRIM. P., provides that release determinations may be based on evidence not admissible under Rules of Evidence, thus trial court properly considered 11-year-old police report on defendant).

1101.b.030 Information relevant to mitigation at a capital sentencing may be presented without regard to its admissibility under the Rules of Evidence for criminal trials.

State v. Walton, 159 Ariz. 571, 769 P.2d 1017 (1989) (pre-Rule 11 screening report).

1101.b.040 The admissibility of evidence in a juvenile dependency, guardianship, or termination proceeding shall be governed by the Arizona Rules of Evidence.

Kimu P. v. Arizona D.E.S., 218 Ariz. 39, 178 P.3d 511, ¶ 10 & n.2 (Ct. App. 2008) (court cited to Rule 45(A) of the Rules of Procedure for the Juvenile Court, and assessed relevance of evidence under Rule 401 of the Arizona Rules of Evidence).

1101.b.050 If a statute so provides, the Arizona Rules of Evidence do not apply in an administrative hearing; the administrative law judge nonetheless is required to apply procedural rules to achieve substantial justice.

T.W.M. Custom Framing v. Industrial Comm'n, 198 Ariz. 41, 6 P.2d 745, ¶ 23 (Ct. App. 2000) (one witness testified by telephone, ALJ considered deposition of another, and nine witnesses gave live testimony; court cited to A.R.S. § 23-941(F) and concluded substantial justice was done).

Ciulla v. Miller, 169 Ariz. 539, 821 P.2d 201 (Ct. App. 1991) (statute provided that Arizona Rules of Evidence do not apply in Department of Transportation administrative hearing; because state followed rules and regulations of MVD pertaining to admission of intoxilyzer results, ALJ properly admitted this evidence).

Ciulla v. Miller, 169 Ariz. 539, 821 P.2d 201 (Ct. App. 1991) (because document showed that person was qualified by Arizona Department of Health Services and followed proper steps in testing intoxilyzer, ALJ properly admitted this evidence).

Ciulla v. Miller, 169 Ariz. 539, 821 P.2d 201 (Ct. App. 1991) (because defendant could have subpoenaed original Department of Health Services records and person who tested intoxilyzer, admission of document showing testing of intoxilyzer, which verified it was functioning properly, did not deny defendant the right of confrontation).

State v. Industrial Comm'n, 159 Ariz. 553, 769 P.2d 461 (Ct. App. 1989) (although ALJ in a workers' compensation proceeding was not bound by Rules of Evidence, right of cross-examination was necessary for substantial justice; ALJ therefore erred in considering as substantive evidence report upon which witness relied because party did not have opportunity to cross-examine person who prepared report).

MISCELLANEOUS RULES

Paragraph (c) — Rule of privilege.

No Arizona cases.

Paragraph (d) — Rules inapplicable.

1101.d.005 Except for rules relating to privilege, the Rules of Evidence do not apply in proceedings before a grand jury.

State v. Baumann, 125 Ariz. 404, 408, 610 P.2d 38, 42 (1980) (grand jurors may consider hearsay evidence).

State ex rel. Berger v. Myers (James), 108 Ariz. 248, 250, 495 P.2d 844, 846 (1972) (defendant contended grand jurors were not permissible to hear what defendant characterized as illegally obtained wiretap evidence; court held exclusionary rule did not apply in grand jury proceedings).

1101.d.020 It is permissible to use hearsay evidence to support a grand jury indictment.

State v. Baumann, 125 Ariz. 404, 408, 610 P.2d 38, 42 (1980) (court stated, “Appellant’s claim that an indictment may not be returned on hearsay evidence finds no support in the law of Arizona”).

Korzep v. Superior Ct., 155 Ariz. 303, 746 P.2d 44 (Ct. App. 1987) (police officer summarized opinion given by medical examiner about injuries to victim and victim’s ability to move after being stabbed).

1101.d.030 If it is highly probable the grand jurors would not have indicted had they heard the testimony of the expert declarant rather than a hearsay version, the matter must be remanded to allow the grand jurors the opportunity to make the determination from the live testimony.

Korzep v. Superior Ct., 155 Ariz. 303, 746 P.2d 44 (Ct. App. 1987) (because police officer misconstrued opinion given by medical examiner about injuries to victim and victim’s ability to move after being stabbed, appellate court held matter must be remanded to grand jurors for new determination).

1101.d.040 It is permissible to use hearsay evidence at a hearing under A.R.S. § 13-3961 to determine whether the proof is evident or the presumption is great that the defendant committed one of the offenses for which bail is not available.

Simpson v. Owens, 207 Ariz. 261, 85 P.3d 478, ¶¶ 43-44 (Ct. App. 2004) (court concluded procedure at bail hearing is more like probable cause determination than a trial).

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